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**ENGROSSED SUBSTITUTE HOUSE BILL 1008**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** House Committee on Judiciary (originally sponsored by Representatives Moeller, Lovick, Kagi, Cody, Appleton, Conway, Morrell, Kenney, Simpson, B. Sullivan, Goodman and Lantz)

READ FIRST TIME 02/15/07.

1 AN ACT Relating to the protection of vulnerable adults; amending  
2 RCW 74.34.020, 74.34.110, 74.34.120, 74.34.145, 74.34.150, and  
3 74.34.210; reenacting and amending RCW 74.34.130; and adding new  
4 sections to chapter 74.34 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 74.34.020 and 2006 c 339 s 109 are each amended to  
7 read as follows:

8 Unless the context clearly requires otherwise, the definitions in  
9 this section apply throughout this chapter.

10 (1) "Abandonment" means action or inaction by a person or entity  
11 with a duty of care for a vulnerable adult that leaves the vulnerable  
12 person without the means or ability to obtain necessary food, clothing,  
13 shelter, or health care.

14 (2) "Abuse" means the willful action or inaction that inflicts  
15 injury, unreasonable confinement, intimidation, or punishment on a  
16 vulnerable adult. In instances of abuse of a vulnerable adult who is  
17 unable to express or demonstrate physical harm, pain, or mental  
18 anguish, the abuse is presumed to cause physical harm, pain, or mental

1 anguish. Abuse includes sexual abuse, mental abuse, physical abuse,  
2 and exploitation of a vulnerable adult, which have the following  
3 meanings:

4 (a) "Sexual abuse" means any form of nonconsensual sexual contact,  
5 including but not limited to unwanted or inappropriate touching, rape,  
6 sodomy, sexual coercion, sexually explicit photographing, and sexual  
7 harassment. Sexual abuse includes any sexual contact between a staff  
8 person, who is not also a resident or client, of a facility or a staff  
9 person of a program authorized under chapter 71A.12 RCW, and a  
10 vulnerable adult living in that facility or receiving service from a  
11 program authorized under chapter 71A.12 RCW, whether or not it is  
12 consensual.

13 (b) "Physical abuse" means the willful action of inflicting bodily  
14 injury or physical mistreatment. Physical abuse includes, but is not  
15 limited to, striking with or without an object, slapping, pinching,  
16 choking, kicking, shoving, prodding, or the use of chemical restraints  
17 or physical restraints unless the restraints are consistent with  
18 licensing requirements, and includes restraints that are otherwise  
19 being used inappropriately.

20 (c) "Mental abuse" means any willful action or inaction of mental  
21 or verbal abuse. Mental abuse includes, but is not limited to,  
22 coercion, harassment, inappropriately isolating a vulnerable adult from  
23 family, friends, or regular activity, and verbal assault that includes  
24 ridiculing, intimidating, yelling, or swearing.

25 (d) "Exploitation" means an act of forcing, compelling, or exerting  
26 undue influence over a vulnerable adult causing the vulnerable adult to  
27 act in a way that is inconsistent with relevant past behavior, or  
28 causing the vulnerable adult to perform services for the benefit of  
29 another.

30 (3) "Consent" means express written consent granted after the  
31 vulnerable adult or his or her legal representative has been fully  
32 informed of the nature of the services to be offered and that the  
33 receipt of services is voluntary.

34 (4) "Department" means the department of social and health  
35 services.

36 (5) "Facility" means a residence licensed or required to be  
37 licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW,

1 nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36  
2 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation  
3 centers; or any other facility licensed by the department.

4 (6) "Financial exploitation" means the illegal or improper use of  
5 the property, income, resources, or trust funds of the vulnerable adult  
6 by any person for any person's profit or advantage other than for the  
7 vulnerable adult's profit or advantage.

8 (7) "Individual provider" means a person under contract with the  
9 department to provide services in the home under chapter 74.09 or  
10 74.39A RCW.

11 (8) "Interested person" means a person who is interested in the  
12 welfare of the vulnerable adult and who has a good faith belief that  
13 the court's intervention is necessary to protect the vulnerable adult.

14 (9) "Mandated reporter" is an employee of the department; law  
15 enforcement officer; social worker; professional school personnel;  
16 individual provider; an employee of a facility; an operator of a  
17 facility; an employee of a social service, welfare, mental health,  
18 adult day health, adult day care, home health, home care, or hospice  
19 agency; county coroner or medical examiner; Christian Science  
20 practitioner; or health care provider subject to chapter 18.130 RCW.

21 ((+9)) (10) "Neglect" means (a) a pattern of conduct or inaction  
22 by a person or entity with a duty of care that fails to provide the  
23 goods and services that maintain physical or mental health of a  
24 vulnerable adult, or that fails to avoid or prevent physical or mental  
25 harm or pain to a vulnerable adult; or (b) an act or omission that  
26 demonstrates a serious disregard of consequences of such a magnitude as  
27 to constitute a clear and present danger to the vulnerable adult's  
28 health, welfare, or safety, including but not limited to conduct  
29 prohibited under RCW 9A.42.100.

30 ((+10)) (11) "Permissive reporter" means any person, including,  
31 but not limited to, an employee of a financial institution, attorney,  
32 or volunteer in a facility or program providing services for vulnerable  
33 adults.

34 ((+11)) (12) "Protective services" means any services provided by  
35 the department to a vulnerable adult with the consent of the vulnerable  
36 adult, or the legal representative of the vulnerable adult, who has  
37 been abandoned, abused, financially exploited, neglected, or in a state  
38 of self-neglect. These services may include, but are not limited to

1 case management, social casework, home care, placement, arranging for  
2 medical evaluations, psychological evaluations, day care, or referral  
3 for legal assistance.

4 ~~((12))~~ (13) "Self-neglect" means the failure of a vulnerable  
5 adult, not living in a facility, to provide for himself or herself the  
6 goods and services necessary for the vulnerable adult's physical or  
7 mental health, and the absence of which impairs or threatens the  
8 vulnerable adult's well-being. This definition may include a  
9 vulnerable adult who is receiving services through home health,  
10 hospice, or a home care agency, or an individual provider when the  
11 neglect is not a result of inaction by that agency or individual  
12 provider.

13 ~~((13))~~ (14) "Vulnerable adult" includes a person:

14 (a) Sixty years of age or older who has the functional, mental, or  
15 physical inability to care for himself or herself; or

16 (b) Found incapacitated under chapter 11.88 RCW; or

17 (c) Who has a developmental disability as defined under RCW  
18 71A.10.020; or

19 (d) Admitted to any facility; or

20 (e) Receiving services from home health, hospice, or home care  
21 agencies licensed or required to be licensed under chapter 70.127 RCW;  
22 or

23 (f) Receiving services from an individual provider.

24 **Sec. 2.** RCW 74.34.110 and 1999 c 176 s 12 are each amended to read  
25 as follows:

26 An action known as a petition for an order for protection of a  
27 vulnerable adult in cases of abandonment, abuse, financial  
28 exploitation, or neglect is created.

29 (1) A vulnerable adult, or interested person on behalf of the  
30 vulnerable adult, may seek relief from abandonment, abuse, financial  
31 exploitation, or neglect, or the threat thereof, by filing a petition  
32 for an order for protection in superior court.

33 (2) A petition shall allege that the petitioner, or person on whose  
34 behalf the petition is brought, is a vulnerable adult and that the  
35 petitioner, or person on whose behalf the petition is brought, has been  
36 abandoned, abused, financially exploited, or neglected, or is

1 threatened with abandonment, abuse, financial exploitation, or neglect  
2 by respondent.

3 (3) A petition shall be accompanied by affidavit made under oath,  
4 or a declaration signed under penalty of perjury, stating the specific  
5 facts and circumstances which demonstrate the need for the relief  
6 sought. If the petition is filed by an interested person, the  
7 affidavit or declaration must also include a statement of why the  
8 petitioner qualifies as an interested person.

9 (4) A petition for an order may be made whether or not there is a  
10 pending lawsuit, complaint, petition, or other action (~~between the~~  
11 ~~parties~~) pending that relates to the issues presented in the petition  
12 for an order for protection.

13 (5) Within ninety days of receipt of the master copy from the  
14 administrative office of the courts, all court clerk's offices shall  
15 make available the standardized forms and instructions required by  
16 section 3 of this act.

17 (6) Any assistance or information provided by any person,  
18 including, but not limited to, court clerks, employees of the  
19 department, and other court facilitators, to another to complete the  
20 forms provided by the court in subsection (5) of this section does not  
21 constitute the practice of law.

22 (7) A petitioner is not required to post bond to obtain relief in  
23 any proceeding under this section.

24 ~~((+6))~~ (8) An action under this section shall be filed in the  
25 county where the (~~petitioner~~) vulnerable adult resides; except that  
26 if the (~~petitioner~~) vulnerable adult has left or been removed from  
27 the residence as a result of abandonment, abuse, financial  
28 exploitation, or neglect, or in order to avoid abandonment, abuse,  
29 financial exploitation, or neglect, the petitioner may bring an action  
30 in the county of either the vulnerable adult's previous or new  
31 residence.

32 ~~((7) The filing fee for the petition may be waived at the~~  
33 ~~discretion of the court.))~~

34 (9) No filing fee may be charged to the petitioner for proceedings  
35 under this section. Standard forms and written instructions shall be  
36 provided free of charge.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 74.34 RCW  
2    to read as follows:

3        (1)    The administrative office of the courts shall develop and  
4    prepare standard petition, temporary order for protection, and  
5    permanent order for protection forms, a standard notice form to provide  
6    notice to the vulnerable adult if the vulnerable adult is not the  
7    petitioner, instructions, and a court staff handbook on the protection  
8    order process.    The standard petition and order for protection forms  
9    must be used after October 1, 2007, for all petitions filed and orders  
10   issued under this chapter.    The administrative office of the courts, in  
11   preparing the instructions, forms, notice, and handbook, may consult  
12   with attorneys from the elder law section of the Washington state bar  
13   association, judges, the department, the Washington protection and  
14   advocacy system, and law enforcement personnel.

15        (a)    The instructions shall be designed to assist petitioners in  
16   completing the petition, and shall include a sample of the standard  
17   petition and order for protection forms.

18        (b)    The order for protection form shall include, in a conspicuous  
19   location, notice of criminal penalties resulting from violation of the  
20   order.

21        (c)    The standard notice form shall be designed to explain to the  
22   vulnerable adult in clear, plain language the purpose and nature of the  
23   petition and that the vulnerable adult has the right to participate in  
24   the hearing and to either support or object to the petition.

25        (2)    The administrative office of the courts shall distribute a  
26   master copy of the standard forms, instructions, and court staff  
27   handbook to all court clerks and shall distribute a master copy of the  
28   standard forms to all superior, district, and municipal courts.

29        (3)    The administrative office of the courts shall determine the  
30   significant    non-English-speaking    or    limited-English-speaking  
31   populations in the state.    The administrator shall then arrange for  
32   translation of the instructions required by this section, which shall  
33   contain a sample of the standard forms, into the languages spoken by  
34   those    significant    non-English-speaking    populations,    and    shall  
35   distribute a master copy of the translated instructions to all court  
36   clerks by December 31, 2007.

37        (4)    The administrative office of the courts shall update the  
38   instructions, standard forms, and court staff handbook when changes in

1 the law make an update necessary. The updates may be made in  
2 consultation with the persons and entities specified in subsection (1)  
3 of this section.

4 (5) For purposes of this section, "court clerks" means court  
5 administrators in courts of limited jurisdiction and elected court  
6 clerks.

7 **Sec. 4.** RCW 74.34.120 and 1986 c 187 s 6 are each amended to read  
8 as follows:

9 (1) The court shall order a hearing on a petition under RCW  
10 74.34.110 not later than fourteen days from the date of filing the  
11 petition.

12 (2) Personal service shall be made upon the respondent not less  
13 than ~~((five))~~ six court days before the hearing. When good faith  
14 attempts to personally serve the respondent have been unsuccessful, the  
15 court shall permit service by mail or by publication.

16 (3) When a petition under RCW 74.34.110 is filed by someone other  
17 than the vulnerable adult, notice of the petition and hearing must be  
18 personally served upon the vulnerable adult not less than six court  
19 days before the hearing. In addition to copies of all pleadings filed  
20 by the petitioner, the petitioner shall provide a written notice to the  
21 vulnerable adult using the standard notice form developed under section  
22 3 of this act. When good faith attempts to personally serve the  
23 vulnerable adult have been unsuccessful, the court shall permit service  
24 by mail, or by publication if the court determines that personal  
25 service and service by mail cannot be obtained.

26 (4) If timely service under subsections (2) and (3) of this section  
27 cannot be made, the court ~~((may set a new hearing date))~~ shall continue  
28 the hearing date until the substitute service approved by the court has  
29 been satisfied. The court may continue any temporary order for  
30 protection until the hearing is held. A petitioner may also move for  
31 temporary relief under chapter 7.40 RCW.

32 **Sec. 5.** RCW 74.34.130 and 2000 c 119 s 27 and 2000 c 51 s 2 are  
33 each reenacted and amended to read as follows:

34 The court may order relief as it deems necessary for the protection  
35 of the ~~((petitioner))~~ vulnerable adult, including, but not limited to  
36 the following:

1 (1) Restraining respondent from committing acts of abandonment,  
2 abuse, neglect, or financial exploitation against the vulnerable adult;

3 (2) Excluding the respondent from (~~petitioner's~~) the vulnerable  
4 adult's residence for a specified period or until further order of the  
5 court;

6 (3) Prohibiting contact with the vulnerable adult by respondent for  
7 a specified period or until further order of the court;

8 (4) Prohibiting the respondent from knowingly coming within, or  
9 knowingly remaining within, a specified distance from a specified  
10 location;

11 (5) Requiring an accounting by respondent of the disposition of  
12 (~~petitioner's~~) the vulnerable adult's income or other resources;

13 (6) Restraining the transfer of the respondent's and/or vulnerable  
14 adult's property for a specified period not exceeding ninety days; and

15 (7) Requiring the respondent to pay (~~the~~) a filing fee and court  
16 costs, including service fees, and to reimburse the petitioner for  
17 costs incurred in bringing the action, including a reasonable  
18 attorney's fee.

19 Any relief granted by an order for protection, other than a  
20 judgment for costs, shall be for a fixed period not to exceed (~~one~~  
21 ~~year~~) five years. The clerk of the court shall enter any order for  
22 protection issued under this section into the judicial information  
23 system.

24 **Sec. 6.** RCW 74.34.145 and 2000 c 119 s 2 are each amended to read  
25 as follows:

26 (1) An order for protection of a vulnerable adult issued under this  
27 chapter which restrains the respondent or another person from  
28 committing acts of abuse, prohibits contact with the (~~petitioner~~)  
29 vulnerable adult, excludes the person from any specified location, or  
30 prohibits the person from coming within a specified distance from a  
31 location, shall prominently bear on the front page of the order the  
32 legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A  
33 CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO  
34 ARREST.

35 (2) Whenever an order for protection of a vulnerable adult is  
36 issued under this chapter, and the respondent or person to be  
37 restrained knows of the order, a violation of a provision restraining

1 the person from committing acts of abuse, prohibiting contact with the  
2 ((petitioner)) vulnerable adult, excluding the person from any  
3 specified location, or prohibiting the person from coming within a  
4 specified distance of a location, shall be punishable under RCW  
5 26.50.110, regardless of whether the person is a family or household  
6 member as defined in RCW 26.50.010.

7 **Sec. 7.** RCW 74.34.150 and 1986 c 187 s 9 are each amended to read  
8 as follows:

9 The department of social and health services, in its discretion,  
10 may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and  
11 with the consent of any vulnerable adult. When the department has  
12 reason to believe a vulnerable adult lacks the ability or capacity to  
13 consent, the department, in its discretion, may seek relief under RCW  
14 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither  
15 the department of social and health services nor the state of  
16 Washington shall be liable for ((failure)) seeking or failing to seek  
17 relief on behalf of any persons under this section.

18 NEW SECTION. **Sec. 8.** A new section is added to chapter 74.34 RCW  
19 to read as follows:

20 (1) When a petition for protection under RCW 74.34.110 is filed by  
21 someone other than the vulnerable adult or the vulnerable adult's  
22 guardian, and the vulnerable adult for whom protection is sought  
23 advises the court at the hearing that he or she does not want all or  
24 part of the protection sought in the petition, then the court may  
25 dismiss the petition or the provisions that the vulnerable adult  
26 objects to and any protection order issued under RCW 74.34.120 or  
27 74.34.130, or the court may take additional testimony or evidence, or  
28 order additional hearings to determine whether the vulnerable adult is  
29 unable, due to incapacity, undue influence, or other factors found by  
30 the court, to protect his or her person or estate in connection with  
31 the issues raised in the petition or order.

32 (2) If the court issues a protection order over the objection of  
33 the vulnerable adult, and is not able to make an adequate determination  
34 regarding whether the vulnerable adult is unable, due to incapacity,  
35 undue influence, or other factors found by the court, to protect his or  
36 her person or estate in connection with the issues raised in the

1 petition or order, based on the evidence and testimony offered at the  
2 hearing, then the court shall schedule a separate evidentiary hearing  
3 on this issue and on any other issue the court may order. The hearing  
4 shall be held within fourteen days of entry of the order. Notice of  
5 the time and place of the evidentiary hearing shall be personally  
6 served upon the vulnerable adult and the respondent not less than six  
7 court days before the hearing. When good faith attempts to personally  
8 serve the vulnerable adult and the respondent have been unsuccessful,  
9 the court shall permit service by mail, or by publication if the court  
10 determines that personal service and service by mail cannot be  
11 obtained. If timely service cannot be made, the court may set a new  
12 hearing date. A hearing under this subsection is not necessary if the  
13 vulnerable adult has been determined to be incapacitated under the  
14 guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under  
15 this subsection, the protection order shall remain in effect pending  
16 the court's decision at the subsequent hearing.

17 (3) At the hearing scheduled by the court, the court shall give the  
18 vulnerable adult, the respondent, the petitioner, and in the court's  
19 discretion other interested persons, the opportunity to testify and  
20 submit relevant evidence.

21 (4) If the court determines that the vulnerable adult is capable of  
22 protecting his or her person or estate in connection with the issues  
23 raised in the petition, and the individual continues to object to the  
24 protection order, the court shall dismiss the order or may modify the  
25 order if agreed to by the vulnerable adult, or the court may enter any  
26 other orders as are proper or necessary in the court's discretion. If  
27 the court determines that the vulnerable adult is not capable of  
28 protecting his or her person or estate in connection with the issues  
29 raised in the petition or order, and that the individual continues to  
30 need protection, the court shall order relief consistent with RCW  
31 74.34.130 as it deems necessary for the protection of the vulnerable  
32 adult. In the entry of any order that is inconsistent with the  
33 expressed wishes of the vulnerable adult, the court's order shall be  
34 governed by the legislative findings contained in RCW 74.34.005.

35 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.34 RCW  
36 to read as follows:

37 Any vulnerable adult who has not been adjudicated incapacitated

1 under chapter 11.88 RCW, or the vulnerable adult's guardian, at any  
2 time subsequent to entry of a permanent protection order under this  
3 chapter, may apply to the court for an order to modify or vacate the  
4 order. In a hearing on an application to dismiss or modify the  
5 protection order, the court shall grant such relief consistent with RCW  
6 74.34.110 as it deems necessary for the protection of the vulnerable  
7 adult, including dismissal or modification of the protection order.

8 **Sec. 10.** RCW 74.34.210 and 1995 1st sp.s. c 18 s 86 are each  
9 amended to read as follows:

10 A petition for an order for protection (~~(or)~~) may be brought by the  
11 vulnerable adult, the vulnerable adult's guardian or legal fiduciary,  
12 the department, or any interested person as defined in RCW 74.34.020.  
13 An action for damages under this chapter may be brought by the  
14 (~~plaintiff~~) vulnerable adult, or where necessary, by his or her  
15 family members and/or guardian or legal fiduciary(~~, or as otherwise~~  
16 provided under this chapter)). The death of the (~~plaintiff~~)  
17 vulnerable adult shall not deprive the court of jurisdiction over a  
18 petition or claim brought under this chapter. Upon petition, after the  
19 death of the vulnerable (~~person~~) adult, the right to initiate or  
20 maintain the action shall be transferred to the executor or  
21 administrator of the deceased, for recovery of all damages for the  
22 benefit of the (~~surviving spouse, child or children, or other heirs~~)  
23 deceased person's beneficiaries set forth in chapter 4.20 RCW or if  
24 there are no beneficiaries, then for recovery of all economic losses  
25 sustained by the deceased person's estate.

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